

ESTTA Tracking number: **ESTTA260782**

Filing date: **01/15/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91183753
Party	Defendant Diallo Yassinn Patrice
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Submission	Reply in Support of Motion
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Date	01/15/2009
Attachments	Reply in support of respondent.pdf (7 pages)(2659142 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HEAVEN HILL DISTILLERIES, INC

Opposer,

Opposition No.91183753

V.

Serial No. 77/266,196

Mark HYPNOTIZER

DIALLO YASSINN PATRICE,

Intl Class: 033

Respondent,

**REPLY IN SUPPORT OF RESPONDENT TO MOTION FOR
SUMMARY JUDGMENT AND MOTION TO SUSPEND**

Applicant Yassinn Patrice Diallo files this reply in support of its answer to motion for summary judgment to address several issues raised in Opponent response.

First Yassinn Patrice Diallo believes that it should be noted that his use of the HYPNOTIZER mark is completely different of what the opponent try to suggest. In fact the TTAB will clearly see, that opposed to what Heaven Hill lawyer try to affirm, HYPNOTIZER application is made for specifics beverages : Alcoholic beverage produced from a brewed malt base with natural flavors, Alcoholic beverages of fruit, Alcoholic fruit extracts, Alcoholics malt coolers, Alcoholic punch, Cachaca, Cognac, Distilled Spirits, Fruit wine, Gin, Hard Cider, Natural Sparkling wines, Prepared alcoholic cocktail, Prepared wine cocktails, Rum, Sparkling fruit wine, Sparkling grape wine, Sparkling wine, Tequila, Vodka, Whiskey, Wine coolers, Wines.

Hypnotizer mark is not made for flavored sparkling water as the opponent lawyer try to affirms. The opposite party can clearly see, that in October 2005 a registration certificate was delivered by French nipo for HYPNOTIZER with a specific design (exhibit A). Opposed to what the opposer lawyer intend to demonstrate, HYPNOTIZER application is for specifics beverages including rum, as mentioned on the certificate design (exhibit B). It is a clear evidence that we claim a special style,with a special bottle, and with colors and specific design, completely different from the opponent design (exhibit C). It is a clear evidence that we apply for a specific mark and a specific design completely different to opponent mark and design, and not only a mark as a word.

Moreover Heaven Hill conceded in his memorandum that there is no likelihood of confusion and that there is no evidence of actual confusion. Given all these factors we can conclude that there is no risk of confusion.

For these reasons Diallo's application should be registered pursuant to 15 U.S.C § 1052(d) and Heaven Hill Motion for summary judgment should not be granted.

Respectfully submitted

DIALLO YASSINN PATRICE

Applicant.

PROOF OF SERVICE

I hereby certify that a true and correct copy of Reply in support of Respondent to motion for summary judgment and motion to suspend was served on the following counsel for Opposer by deposit in the French Mail, in Paris France, in a sealed envelope, with first class postage fully prepaid this 14 day of January, 2009.

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UNITED STATES

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Dated: January 14 , 2009

DIALLO YASSINN PATRICE.

EXHIBIT A

DESSINS ET MODÈLES

Code de la propriété intellectuelle

Livres IV : (Titre premier), V et VIII

NOTIFICATION DE PUBLICATION ET CERTIFICAT D'IDENTITÉ

Le dépôt de dessin(s) ou modèle(s) dont les références et la(les) reproduction(s) figurent au verso a été publié au Bulletin officiel de la propriété industrielle n° **05/21 du 21 octobre 2005**

La présente notification vaut certificat d'identité.

Le Directeur général de l'Institut
national de la propriété industrielle

Benoît BATTISTELLI

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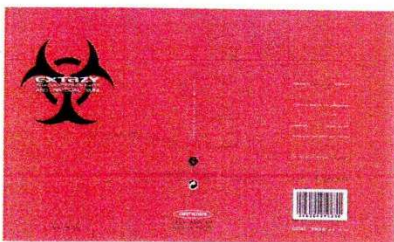


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Modèle(s) publié(s)

- (51) Classement 09-03 (11) N°(s) de publication 765 152 et 765 153
(54) Nature du (des) objet(s) : Emballage, Emballage et sa capsule
D.M. n° 1 et 2 : 1 repr.
(45) Date de publication : 21 octobre 2005
(57) Description : Repr. 1-1 : Vue dépliée. ♦ Repr. 2-1 : Emballage et sa capsule



1-1

765 152

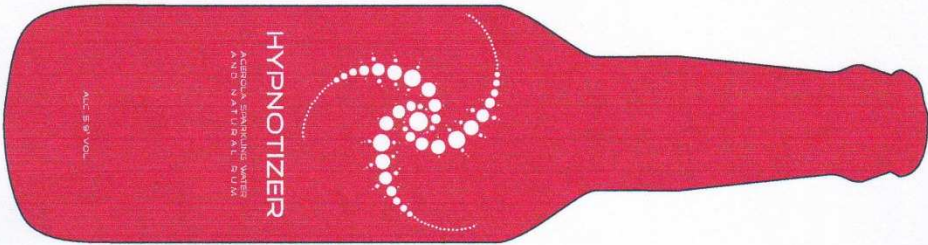


2-1

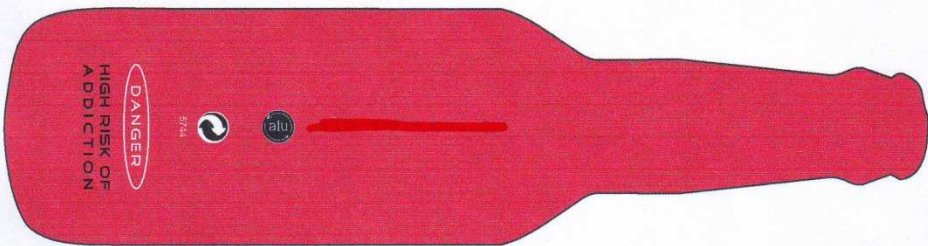
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EXHIBIT B

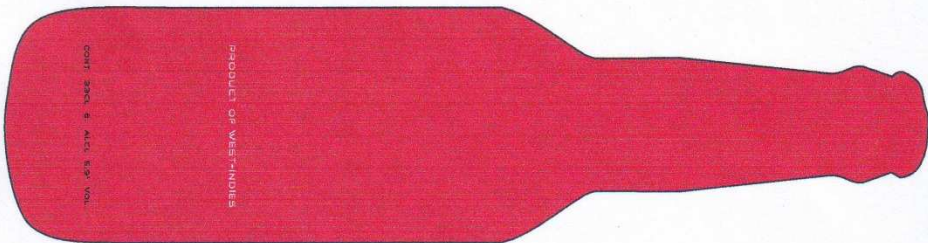
FRONT



SIDE



BACK



CAPSULE

EXHIBIT C

